



Appeal Decision

by J Whitfield BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 July 2023

Appeal Ref: APP/N0410/X/22/3306644

The North Star, 63-67 Thorney Mill Road, Iver, Buckinghamshire, London SL0 9AH

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (the Act) as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Amer Bashlawi against the decision of South Bucks District Council (the LPA).
 - The application Ref PL/21/4057/EU, dated 1 October 2021, was refused by notice dated 28 June 2022.
 - The application was made under section 191(1)(a) and section 191(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is a canopy under which hand car washing takes place and an area of land used for the storage of the car washing materials and small wooden shed used as an office.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The LDC application was made on forms proscribed for applications for proposed use or development under S192 of the Act. However, it is clear from the description of the development on the forms as an existing use and existing associated operations that an LDC was sought for an existing use under S191(1)(a) and existing operations under S191(1)(b) of the Act. The appellant indicates as such on the appeal form. Moreover, it is clear from the LPA's decision notice that it considered it to be an application under S191. As such, I have dealt with the appeal on the basis of an application made under S191(1)(a) and S191(1)(b) of the Act.

Main Issue

3. The main issue is whether the LPA's decision to refuse to grant an LDC was well-founded.

Reasons

4. S191(2) of the Act states that uses and operations are lawful at any time if: (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and, (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

5. S171B(1) of the Act sets out that where there has been a breach of planning control consisting of the carrying out of building operations, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed. S171B(3) states that, in the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.
6. For the appeal to succeed, is it therefore necessary for the appellant to demonstrate, on the balance of probabilities, that the canopy and shed were substantially complete on or before 1 October 2017. Moreover, it is necessary for the appellant to demonstrate that the material change of use of the Land to hand car washing took place on or before 1 October 2011, and the use subsisted without interruption for 10 years thereafter.
7. The appeal site comprises part of the car park of the North Star public house. The appellant states that part of the car park has operated as a hand car wash with the canopy and small wooden shed erected since 2016. The appellant has provided a written letter indicated that the car wash had been operating before they purchased the lease on 11 June 2013. However, no evidence is provided to demonstrate when the use commenced prior to that date. A written letter from the present operator indicates that they took over the business on 22 February 2015 and have operated it since. Likewise, the previous operator has written to say they managed the car wash from June 2012 until February 2015. Several electricity bills have been provided, however, they provide no indication of a car washing facility taking place on the Land. In any event, the earliest bill is dated 4 September 2015. As a result, there is very little contemporaneous evidence of a hand car washing facility taking place on the Land prior to 11 June 2013.
8. On that basis alone, the appeal cannot succeed in respect of the existing use, as on the appellant's evidence, the material change of use of the land to a hand car wash took place less than 10 years before the LDC application was made. Therefore, at the time the LDC application was made, it would have been open to the LPA to take enforcement action, as a period of ten years continuous use beginning with the date of the breach had not been achieved.
9. The building operations would be immune from enforcement action if they were substantially completed in 2016 as suggested. Nevertheless, beyond the statement in the application forms and appeal forms that they were built in 2016, the appellant has provided little evidence which indicates when the building operations were substantially completed. There is nothing in the appellant's letter nor the letters of the current and previous operators which indicates when the operations were carried out. The appellant's evidence should not be rejected if there is no evidence to contradict or make their version of events less than probable. However, the paucity of evidence before me here leads to conclude that the appellant's evidence is not sufficiently precise or unambiguous to demonstrate, on the balance of probabilities, that the erection of a canopy and office was immune from enforcement action on the day the LDC application was made.
10. Thus, at the date the LDC application was made, the uses and operations as described would not have been lawful under S191(2) of the Act.

Conclusions

11. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of a canopy under which hand car washing takes place and an area of land used for the storage of the car washing materials and small wooden shed used as an office was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

J Whitfield

INSPECTOR